2752

SUPREME COURT OF THE UNITED STATES.

No. 151.

JOSEPH KIMBRO, PLAINTIFF IN ERROR,

vs.

CUTHBERT BULLITT, THOMAS D. MILLER, AND LLOYD D. ADDISON, PARTNERS IN TRADE, UNDER THE NAME AND STYLE OF BULLITT, MILLER & CO.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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Transcript of Record.

United States of America, Circuit Court, for the Middle District of Tennessee.

BULLITT, MILLER & Co., }
vs. }
JOSEPH KIMBRO. }

MIDDLE DISTRICT OF TENNESSEE, *sct.*

At a circuit court of the United States, begun and held at the Capitol, in Nashville, in and for the district aforesaid, on the being the day of November, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventy-eighth year of the independence of the United States.—Present, the Honorable John Catron, one of the associate justices of the Supreme Court of the United States, and the Honorable West H. Humphreys, judge of the district court of the United States, for the district of East, Middle, and West Tennessee.

Be it remembered, that on the 16th day of August, 1854, the following writ was issued by the clerk of said court; which, with a copy of the declaration in the above stated case, were executed upon, and delivered to the defendant, on the 22d of August, 1854.

Summons issued Aug. 16th, 1854; *executed Aug. 22d*, 1854.

Summons.

The President of the United States of America, to the Marshal of Middle Tennessee district, greeting:

You are hereby commanded to summon Joseph Kimbro, a citizen of the State of Tennessee, if he be found in your district, to be and appear before the judges of the circuit court of the United States, in the eighth circuit, for the district of Middle Tennessee, at Nashville, on the first Monday of September next, then and there to answer Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison, citizens of the State of Louisiana, of a plea of trespass on the case, to their damage seven thousand dollars; and have then and there this writ.

Witness Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year 1854, and of the independence of the United States the .

JACOB McGAVOCK, *Clerk.*

Know all men by these presents, that we, Cuthbert Bullitt, Thomas D. Miller, Lloyd D. Addison, and Ewing & Cooper, are

held and firmly bound unto Joseph Kimbro in the sum of two hundred and fifty dollars; to be void on condition that Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison do pay and satisfy all costs that may accrue in their behalf in the prosecution of a suit this day commenced by them in the circuit court of the United States, for the district of Middle Tennessee, against Joseph Kimbro, on falilure of the plaintiffs to prosecute the said suit with effect, and also on failure of the defendant, if convicted, to pay said costs.

Witness our hands and seals, this 16th day of August, 1854.

M. COOPER.

Declaration.—Filed Sept. , 1854.

September Term, 1854.

United States Circuit Court, for the district of Middle Tennessee.

Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison, partners in trade, in the city of New Orleans, State of Louisiana, under the name and style of Bullitt, Miller & Co., and citizens of said State of Louisiana, by attorney, complain of Joseph Kimbro, a citizen of the State of Tennessee, in a plea of trespass on the case:

For that whereas, heretofore, to wit, on, &c., at, &c., the said defendant, then a citizen of Tennessee, with others, citizens of the State of Mississippi, who are not sued in this action, under the name and style of Dement, Kimbro & Sons, in consideration that the plaintiffs, then citizens of Louisiana, at the request of the said Dement, Kimbro & Sons, and for their accommodation, had then accepted three certain bills of exchange, each dated Lexington, Holmes county, Mississippi, April 2d, 1853, drawn by Morgan McAfee, who is not sued in this action, and the said Dement, Kimbro & Sons, upon the said plaintiffs, at New Orleans, for the sum of two thousand dollars each, payable to the order of Morgan McAfee—the first on the 18th Jan'y, 1854; the second on the 4th Feb'y, 1854; the third on the 25th Feb'y, 1854—promised the plaintiffs to furnish them with money to pay said bills, at the time when the same should become payable. Yet the said defendant never did furnish the plaintiffs with said money, (nor did any one of the said drawers,) by reason whereof the plaintiffs have been compelled, with their own money, to pay the amount of said bills to the holder thereof, of which said defendant had due notice.

And for that whereas, also, the said defendant, on, &c., at, &c., aforesaid, in consideration that the plaintiffs, at the request of the said defendant, and for his accommodation, had then accepted three certain bills of exchange, dated Lexington, Holmes county, Miss., April 2d, 1853, drawn by the said defendant (with others not sued in this action) upon the said plaintiffs for the sum of two thousand

dollars each, payable to one Morgan McAfee, or order—the first on the 18th Jan'y, 1854; the second on the 4th Feb'y, 1854; and the third on the 25th Feb'y, 1854—promised the said plaintiffs to pay said bills at the time when the same should become payable; and, in case of failure, to repay to the said plaintiffs the amount which the said plaintiffs might pay on said bills, with interest, and two and one half per cent. commissions for acceptance, and two and one half per cent. commissions for advancing. Yet the said defendant never did furnish the said plaintiffs with said money; by reason whereof the plaintiffs have been compelled to pay, with their own money, the amount of said bills to the holder thereof, of which said defendant had due notice.

And for that whereas, also, the said defendant, on, &c., at, &c., aforesaid, was indebted to the plaintiffs in the sum of ten thousand dollars, for money then paid by the plaintiffs for the use of the defendant, at his request, and in a like sum for money then lent by the plaintiffs to the defendant at his request; and in the like sum for money found to be due from the defendant to the plaintiffs upon an amount then stated between them; and in a like sum for the acceptance, by the plaintiffs, of bills of exchange for the defendant, at his request, and for money paid, laid out, and expended in paying said bills, by reason of said acceptance, and for commissions for advancing money on said acceptances, at the defendant's request. And in consideration thereof, the defendant then and there promised the plaintiffs to pay them the several moneys aforesaid; upon demand. Yet the said defendant, although often requested, has never paid the said several moneys in the said several counts in this declaration mentioned; but wholly neglects and refuses, to the damage of said plaintiffs of ten thousand dollars; and therefore they sue.

EWING & COOPER,
Atty's for Pl'ffs.

Pleas to Declaration.—Filed Feb'y 21, 1855.

1. And the defendant, Joseph Kimbro, by his attorney, comes and defends the wrong and injury, when, &c., where, &c.; and for plea says, that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that he did not draw the bills of exchange in the declaration mentioned, in manner and form as is therein set forth and stated; and of this he puts himself upon the country.

R. J. MEIGS, *Att'y.*

2. And for further plea in this behalf he says "actio non," &c., because, he says, he did not authorize any one to draw the bills of exchange in the declaration mentioned, or any of them, in manner and form as the plaintiffs in declaring have alleged; and this he is ready to verify; wherefore he prays judgment, &c.

R. J. MEIGS, *Att'y.*

held and firmly bound unto Joseph Kimbro in the sum of two hundred and fifty dollars; to be void on condition that Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison do pay and satisfy all costs that may accrue in their behalf in the prosecution of a suit this day commenced by them in the circuit court of the United States, for the district of Middle Tennessee, against Joseph Kimbro, on falilure of the plaintiffs to prosecute the said suit with effect, and also on failure of the defendant, if convicted, to pay said costs.

Witness our hands and seals, this 16th day of August, 1854.

M. COOPER.

Declaration.—Filed Sept. , 1854.

September Term, 1854.

United States Circuit Court, for the district of Middle Tennessee.

Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison, partners in trade, in the city of New Orleans, State of Louisiana, under the name and style of Bullitt, Miller & Co., and citizens of said State of Louisiana, by attorney, complain of Joseph Kimbro, a citizen of the State of Tennessee, in a plea of trespass on the case:

For that whereas, heretofore, to wit, on, &c., at, &c., the said defendant, then a citizen of Tennessee, with others, citizens of the State of Mississippi, who are not sued in this action, under the name and style of Dement, Kimbro & Sons, in consideration that the plaintiffs, then citizens of Louisiana, at the request of the said Dement, Kimbro & Sons, and for their accommodation, had then accepted three certain bills of exchange, each dated Lexington, Holmes county, Mississippi, April 2d, 1853, drawn by Morgan McAfee, who is not sued in this action, and the said Dement, Kimbro & Sons, upon the said plaintiffs, at New Orleans, for the sum of two thousand dollars each, payable to the order of Morgan McAfee—the first on the 18th Jan'y, 1854; the second on the 4th Feb'y, 1854; the third on the 25th Feb'y, 1854—promised the plaintiffs to furnish them with money to pay said bills, at the time when the same should become payable. Yet the said defendant never did furnish the plaintiffs with said money, (nor did any one of the said drawers,) by reason whereof the plaintiffs have been compelled, with their own money, to pay the amount of said bills to the holder thereof, of which said defendant had due notice.

And for that whereas, also, the said defendant, on, &c., at, &c., aforesaid, in consideration that the plaintiffs, at the request of the said defendant, and for his accommodation, had then accepted three certain bills of exchange, dated Lexington, Holmes county, Miss., April 2d, 1853, drawn by the said defendant (with others not sued in this action) upon the said plaintiffs for the sum of two thousand

dollars each, payable to one Morgan McAfee, or order—the first on the 18th Jan'y, 1854; the second on the 4th Feb'y, 1854; and the third on the 25th Feb'y, 1854—promised the said plaintiffs to pay said bills at the time when the same should become payable; and, in case of failure, to repay to the said plaintiffs the amount which the said plaintiffs might pay on said bills, with interest, and two and one half per cent. commissions for acceptance, and two and one half per cent. commissions for advancing. Yet the said defendant never did furnish the said plaintiffs with said money; by reason whereof the plaintiffs have been compelled to pay, with their own money, the amount of said bills to the holder thereof, of which said defendant had due notice.

And for that whereas, also, the said defendant, on, &c., at, &c., aforesaid, was indebted to the plaintiffs in the sum of ten thousand dollars, for money then paid by the plaintiffs for the use of the defendant, at his request, and in a like sum for money then lent by the plaintiffs to the defendant at his request; and in the like sum for money found to be due from the defendant to the plaintiffs upon an amount then stated between them; and in a like sum for the acceptance, by the plaintiffs, of bills of exchange for the defendant, at his request, and for money paid, laid out, and expended in paying said bills, by reason of said acceptance, and for commissions for advancing money on said acceptances, at the defendant's request. And in consideration thereof, the defendant then and there promised the plaintiffs to pay them the several moneys aforesaid; upon demand. Yet the said defendant, although often requested, has never paid the said several moneys in the said several counts in this declaration mentioned; but wholly neglects and refuses, to the damage of said plaintiffs of ten thousand dollars; and therefore they sue.

EWING & COOPER,
Atty's for Pl'ffs.

Pleas to Declaration.—Filed Feb'y 21, 1855.

1. And the defendant, Joseph Kimbro, by his attorney, comes and defends the wrong and injury, when, &c., where, &c.; and for plea says, that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that he did not draw the bills of exchange in the declaration mentioned, in manner and form as is therein set forth and stated; and of this he puts himself upon the country.

R. J. MEIGS, *Att'y.*

2. And for further plea in this behalf he says "actio non," &c., because, he says, he did not authorize any one to draw the bills of exchange in the declaration mentioned, or any of them, in manner and form as the plaintiffs in declaring have alleged; and this he is ready to verify; wherefore he prays judgment, &c.

R. J. MEIGS, *Att'y.*

3. And for further plea in this behalf he says actio non, &c., because, he says, that he did not assume and undertake, in manner and form as the plaintiffs in declaring have alleged; and of this he puts himself upon the country.

R. J. MEIGS, *Att'y.*

The above defendant being duly sworn, makes oath that the above pleas, numbered respectively 1, 2 and 3, are true in substance and fact.

JOSEPH KIMBRO.

Sworn and subscribed before me Feb'y 21, 1855.

JACOB McGAVOCK, *Clerk.*

Order June 18, 1855.

At may term, 1855, this order was made by the court:

Continued as on affidavit of plaintiffs, and it is considered by the court that the plaintiffs pay the costs of this term.

Order Nov. 12, 1855.

And at November term, 1855, this order was made by the court:

The parties appear, by their attorneys, and it is ordered by the court that said cause be continued until next court, on the application of plaintiffs, and that they pay the costs of this term.

Order May 6, 1856.

And at May term, 1856, this order was made by the court:

The parties come, by attorneys, and on application of plaintiffs, by attorney, they have leave to amend their declaration, by adding additional counts thereto, and paying all costs up to this time.

Amended Declaration.—Filed May , 1856.

United States Circuit Court for the district of Middle Tennessee—May term, 1856.

Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison, partners in trade in the city of New Orleans, State of Louisiana, under the name and style of Bullitt, Miller & Co., and citizens of said State of Louisiana, by attorney, complain of Joseph Kimbro, a citizen of the State of Tennessee, in a plea of trespass on the case:

For that whereas heretofore, to wit, on, &c., at, &c., the said defendant, then a citizen of the State of Tennessee, with others, citizens of the State of Mississippi, who are not sued in this action, partners under the name and style of Dement, Kimbro & Sons, in consideration that the plaintiffs, then citizens of Louisiana, at the request of the said Dement, Kimbro & Sons, and for their accommodation, had then accepted three certain bills of exchange, each dated Lexington, Holmes co., Miss., April 2d, 1853, drawn by Morgan

McAfee (who is not sued in this action) and the said Dement, Kimbro & Sons, by the name and style of Dement, Kimbro & Son, upon the said plaintiffs at New Orleans, for the sum of two thousand dollars each, payable to the order of Morgan McAfee—the first on the 18th Jan'y, 1854, the second on the 4th of Feb'y, 1854, and the third on the 25th of Feb'y, 1854—promised the plaintiffs to furnish them with money to pay said bills at maturity. Yet the said defendant never did furnish the plaintiffs with said money, (nor did any one of the said drawers,) by reason whereof the plaintiffs have been compelled with their own money to pay the amount of said bills to the holders thereof, of which said defendant had due notice.

And for that whereas also heretofore, to wit, on, &c., at, &c., aforesaid, the said defendant, then a citizen of the State of Tennessee, with others, citizens of the State of Mississippi, who are not sued in this action, partners under the name and style of Dement, Kimbro & Son, in consideration that the plaintiffs, then citizens of Louisiana, at the request of the said Dement, Kimbro & Son, and for their accommodation, had then accepted their three certain bills of exchange, each dated Lexington, Holmes co., Miss., April 2d, 1853, drawn by Morgan McAfee (who is not sued in this action) and the said Dement, Kimbro & Son, upon the said plaintiffs at New Orleans, for the sum of two thousand dollars each, payable to the order of Morgan McAfee—the first on the 18th of Jan'y, 1854, the second on the 4th of Feb'y, 1854, the third on the 25th of Feb'y, 1854—promised the plaintiffs to furnish them with money to pay said bills at the time when the same should become payable. Yet the said defendant never did furnish the plaintiffs with said money, (nor did any one of the said drawers,) by reason whereof the plaintiffs have been compelled with their own money to pay the amount of said bills to the holder thereof, of which said defendant had due notice.

And for that whereas also heretofore, to wit, on, &c., at, &c., the said defendant, then a citizen of the State of Tennessee, with others, then citizens of the State of Mississippi, who are not sued in this action, partners under the name and style of Dement, Kimbro & Sons, in consideration that the plaintiffs, then citizens of Louisiana, at the request of the said Dement, Kimbro & Sons, and for their accommodation, had then accepted three certain bills of exchange, each dated Lexington, Holmes co., Miss., April 2d, 1853, drawn by Morgan McAfee (who is not sued in this action) and Dement, Kimbro & Son, upon the said plaintiffs at New Orleans, for the sum of two thousand dollars each—the first due on the 18th of Jan'y, 1854, payable to Morgan McAfee, and by him and Dement, Kimbro & Sons endorsed; the second due on the 4th of Feb'y, 1854, payable to Morgan McAfee, and by him endorsed; and the third due 25th of Feb'y, 1854, payable to the order

of Morgan McAfee, and by him and Dement, Kimbro & Sons endorsed—promised the plaintiffs to furnish them with money to pay said bills at maturity; and in case of failure, to pay reasonable charges for acceptances and payment of said bills. Yet the said defendant did not furnish the plaintiffs with said money, (nor did any of the drawers,) by reason whereof the plaintiffs have been compelled with their own money to pay the amount of said bills to the holders thereof; yet the said defendant, although often requested so to do, has never paid the said several moneys in the said several counts in this declaration mentioned, but wholly neglects and refuses, to the damage of said plaintiffs of ten thousand dollars, and therefore they sue.

EWING & COOPER,
Att'y for Pl'ffs.

And for that whereas also, on, &c., at, &c., the said defendant, then a citizen of Tennessee, with others, then citizens of Miss., and not sued in this action, partners in a farm and mill, under the name and style of Dement, Kimbro & Sons, in consideration that the plaintiffs, then citizens of Louisiana, had accepted certain bills of exchange, and advanced money to the firm and for the use and benefit of said partnership, to the amount of ($4,736 88) two thousand seven hundred and thirty-six $\frac{88}{100}$ dollars, and at their special instance and request promised the said plaintiffs to pay them the said money on request; yet defendant, although requested, has never paid the said money, but refuses, to plaintiffs' damage ten thousand dollars.

EWING & COOPER, *Sol'rs.*

Pleas to amended Declaration.—Filed August 2, 1856.

1. And the defendant, Joseph Kimbro, by his attorney, comes and defends the wrong and injury, when, &c., where, &c., and for plea says that the plaintiffs ought not to have and maintain their *their* aforesaid action thereof against him, because he says, that he did not draw the bills of exchange in the declaration mentioned, in manner and form as is therein set forth and stated, and of this he puts himself upon the country.

R. J. MEIGS, *Att'y.*

2. And for further plea in this behalf he says, that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says, that he did not draw, nor did he endorse or authorize any person to draw or endorse for him, or in his name, the bills of exchange in the declaration mentioned, in manner and form as is therein alleged, and this he is ready to verify; wherefore he prays judgment, &c.

R. J. MEIGS, *Att'y.*

3. And for further plea in this behalf he says, the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says, he did not promise and undertake in manner and form as the plaintiffs in declaring have alleged, and of this he puts himself upon the country.

R. J. MEIGS, *Att'y.*

4. And for further plea in this behalf the defendant says, that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says, that the bills of exchange in the declaration mentioned were drawn and endorsed by the aforesaid Dement, and accepted by the plaintiffs for the purpose of raising money to be laid out in the purchase of slaves to be imported from some other State or Territory of the United States, for sale, into the State of Mississippi, which slaves were afterwards purchased with said money, and imported as aforesaid into the State of Mississippi, and there sold, according to the original intent, contrary to the form of the statute of Mississippi, in that behalf made and provided, and this the defendant is ready to verify; wherefore he prays judgment, &c.

R. J. MEIGS, *Att'y.*

The above defendant being duly sworn, makes oath that the pleas above pleaded, numbered respectively 1, 2, 3, and 4, are true in substance and fact.

JOSEPH KIMBRO.

Sworn and subscribed before me, August 2, 1856,
JACOB McGAVOCK, *Clerk.*

Replications to Pleas.—Filed , 185 .

And the said plaintiffs, to the first and third pleas to the original declaration, and to the first and third pleas to the amended declaration, say they do the like.

And the said plaintiffs, to the second plea to the original declaration, and the second plea to the amended declaration, say: that they brought this action not upon bills drawn under special authority from defendant, but for that the said defendant being then in partnership with L. N. Dement, J. C. G. Kimbro, and Joseph A. Kimbro, for the purpose of farming, and also of running a steam saw-mill, the said Dement to furnish one-third of the capital stock, and the defendant to furnish two-thirds of the capital stock, and the parties to furnish negroes or hands, stock, provisions for man and beast, and all necessary utensils in the same proportion, the said business being conducted under the name and style of Dement, Kimbro & Sons, and being so in partnership, the said L. N. Dement, partner as aforesaid, for the purposes of said partnership, drew and endorsed the said bills of exchange in the said declaration mentioned, in manner and form as therein charged, for

the purpose of raising the capital stock and furnishing negroes, stock, provisions, &c., as aforesaid, and the same were accepted and paid by plaintiffs for the benefit of the firm, as in the said declaration charged, and this the plaintiffs are ready to verify.

And the said plaintiffs, to the defendant's fourth plea to the amended declaration, say that the said bills of exchange were not drawn and endorsed by the said Dement, nor accepted by the said plaintiffs for the purpose of raising money to be laid out in the purchase of slaves, to be imported from some other State or Territory of the United States, for sale in the State of Mississippi, nor were said slaves afterwards bought, imported, and sold in manner and form as in said plea alleged, contrary to the form of the statute of the State of Mississippi in that behalf made and provided; and of this the plaintiffs put themselves on the country.

EWING & COOPER, *Atty's.*

Replication of Def't.—Filed , 185 .

And the defendant also.

R. J. MEIGS.

Rejoinder to Replication.—Filed , 185 .

Rejoinder to the Replication to 2d Plea.

And the said defendant, by his attorney, says that the plaintiffs' replication to the second plea to the original declaration, and to the second plea to the amended declaration, is not sufficient in law, and he therefore prays judgment, &c.

R. J. MEIGS, *Att'y for Defendant.*

Order made April 22d, 1857.

Order for Continuance.

At April term, 1857, continued as on affidavit of the defendant, and it is considered that said defendant pay the costs of this term.

Verdict of Jury.—Oct. 20, 1857.

At October term, 1857, the following judgment was rendered by the jury:

The parties come by their attorneys, and thereupon come a jury of good and lawful men, to wit: Bolling Gordon, Walham Moore, C. B. McGraw, Thomas Mabry, Hiram Vaughan, John Guthrie, C. W. Moorman, George W. McBride, Hugh Thomason, W. P. Goodbar, H. W. Watterson, and A. Northcutt, who being elected, tried, and sworn well and truly to try the issues joined, and having heard the evidence, on their oath do say they find the issues in favor of the plaintiffs, and assess their damages sustained by reason of the defendant's non-performance of the promises and undertakings in the declaration mentioned, to five thousand five hundred and ten dollars and 48 cents. It is therefore considered by the court that the plaintiffs recover against said defendants their

damages aforesaid so by the jury assessed, and their costs in this behalf expended.

Order, Nov. 5, 1857.

At October term, 1857, this order was made:

The parties aforesaid again come by their attorneys, and the defendant demurred to the plaintiffs' replication to the second plea to the original declaration, and to the second plea to the amended declaration, being argued by counsel and seen and understood, it is considered by the court that said demurrer be overruled. Motion by def't, by his attorney, for a new trial.

Order, Nov. 9, 1857.

And at October term, 1857, the following order was made by the court:

The parties again come by their attorneys, and on argument of the rule for a new trial, it is ordered by the court that the same be overruled.

Order, Nov. 11, 1857.

And at October term, 1857, this order was made by the court:

The parties again come by their attorneys, and the defendant by his attorney tenders a bill of exceptions to the opinion of the court, which is received, signed, and sealed by the court, and ordered to be made a part of the record of this cause.

Bill of Exceptions.—Filed Nov. 11, 1857.

Be it remembered, that on the trial of this case the plaintiffs submitted to the jury the following evidence.

Evidence.

The depositions of Urbain Forestier and Theodore Reon, and the depositions of James Ready and John M. West, in the words and figures following, to wit:

Deposition of Urbain Forestier.—Taken Feb. 19, 1855.

Says: "That at the time the bills hereunto annexed, and marked A, B, and C, were accepted and paid, he was a clerk of Bullitt, Miller & Co.; that he knows the said drafts were paid out of the funds of the said Bullitt, Miller & Co., with the exception of the sum of sixteen hundred and eighty-two $\frac{80}{100}$ dollars, proceeds of fifty bales of cotton, sold on the 15th and 20th of February, 1854, as credited in the account rendered, a copy of which, marked D, is herewith annexed, and that the drawers failed to meet the balance due on said drafts.

("The bills of exchange mentioned in this deposition are inserted in pages 17 & 18.)

U. FORESTIER."

Deposition of Theodore Reon.—Taken Feb'y 19, 1855.

Says: "The account annexed, marked D, is true and correct, and shows the amount due by defendant to Bullitt, Miller & Co. The charges in said account for advancing and accepting are reasonable and proper, and according to the custom of merchants in the city of New Orleans. Witness is in the employ of plaintiffs, as book-keeper. The account annexed, to the correctness of which he has testified, was rendered to the defendants in July last.

TH'E REON."

Exhibit "D," referred to above.

Morgan McAfee and Dement, Kimbro & Sons, in account with Bullitt, Miller & Co.

APRIL 9, 1853.

To our acceptance of your joint drafts in favor Morgan McAffee, dated April 2d, 1853, and due as below:

One due 18|21 January, 1854.....	$2,000 00	
" " 4|7 February "	2,000 00	
" " 25|28 February "	2,000 00	
Commission 2½ p. c. for accepting the above drafts.....	150 00	
Balance of interest to 15th July, 1854...	154 15	
Commission advancing amount not covered by shipment of cotton, $4,621 $\frac{85}{100}$	115 53	
		$6,419 68

CREDITS.—Feb'y 15, 1854.

By net proceeds ALN [A] 9 bales cotton.....	309 33	
" " " BS " 6 " "	205 08	
" " " BS " 6 " "	212 39	
" " " ALN " 9 " "	286 43	
" " " McRae " 8 " "	265 63	
" " " BS " 12 " "	403 94	
		1,682 80
Balance due us as cash 15th July.....		$4,736 88

E. & O. E.

(Signed) BULLITT, MILLER & CO.,
Per EDW. BIOREN.

New Orleans, 6th July, 1854.

Deposition of James Reedy.—Taken Feb'y 22d, 1855.

Int. 1st by plaintiffs. Are you acquainted with the parties to the above stated cause?

Ans. Yes, I do.

Int. 2. Did you or not know the firm of Dement, Kimbro & Sons, in or near Lexington, Holmes county, Mississippi?

Ans. I did.

Int. 3. Who composed said firm?

Ans. Lesenby N. Dement, Joseph Kimbro, of Tennessee, John C. G. Kimbro and Joseph A. Kimbro.

Int. 4. When did said firm commence business under said firm name, and how long did it continue?

Ans. It commenced, I think, on the first of January, 1853, and continued until the death of L. N. Dement, which occurred on the 3d of October, 1853.

Int. 5. What was the nature of the business of said firm, and who was the principal business partner here?

Ans. They were engaged in farming, steam saw-mill, and general trading. L. N. Dement was the principal business partner in the firm.

Int. 6. Do you or not know anything of a purchase in Vicksburg of some negroes by Dement, as a partner of Dement, Kimbro & Sons, and Morgan McAfee; if yea, how were such negroes paid, and who took possession of them?

Ans. Dement got to my house, I think, about the 1st of April, 1853, and said he had bought the lot of negroes he brought with him, about 13 in number, from Bolton, Dickens & Co., in Vicksburg. Dement had them in possession, and had control over them; spoke of them as firm negroes, and employed Nesbet to take them in charge and sell them, and keep McAfee from having anything to do with them, or the funds arising from the sale of them; his object being to save Joseph Kimbro from loss, and to meet the liability to Bullitt, Miller & Co., and to Bolton, Dickens & Co., incurred in the purchase of these negroes by the firm of Dement, Kimbro & Sons, in connection with Morgan McAfee and Wm. M. Joyne.

JAS. REEDY.

Deposition of John M. West.—Taken Feb'y 22, 1855.

Int. 1. State what would be your answers to the foregoing interrogatories propounded to James Reedy?

Ans. I adopt all of James Reedy's answers, except that portion of his answer to the 5th interrogatory in which he states Dement came to his house in April, 1853, and will state, in addition, that Dement was the principal financier of the firm of Dement, Kimbro & Sons; did the principal trading; borrowed money and paid it back, &c., in the name of the firm. I was sheriff of the county, and had frequent business transactions with him.

JOHN M. WEST.

And then he rested his case.

Whereupon the defendant submitted to the jury the following evidence:

Deposition of Thomas Botters.—Taken Feb'y 24, 1855.

I, Thomas Botters, am acquainted with the defendant, but not

the plaintiffs in said suit. About the 5th day of January, 1853, I was applied to by Lesenby N. Dement, late of this (Holmes) county, but now deceased, to draught articles of partnership between himself and the defendant in said suit, viz: Joseph Kimbro and the two sons of said defendant, viz: John C. G. Kimbro and Joseph A. Kimbro, said partnership to be limited to the carrying on a farm and steam-mill near this place, Lexington; that in accordance with his instructions I prepared an agreement, of which the following is an exact copy, viz: "This indenture entered into between Lesenby N. Dement, of Holmes county, State of Mississippi, of the first part, Joseph Kimbro, sen'r, of the State of Tennessee, of the second part, and Joseph Kimbro, jun'r, and John C. G. Kimbro, also of the State of Tennessee, of the third part, witnesseth: that the said parties of the first, second, and third parts have agreed to form and carry on from the date hereof, for the space of two years, a copartnership under the style of Dement, Kimbro & Sons, for the purpose of farming, and also of running a steam saw-mill, the parties of each part to furnish one-third of the capital stock of said copartnership, or the said party of the second part to furnish two-thirds of said capital stock, on behalf of himself and his two sons, parties of the third part; and the said parties are to furnish negroes or hands, stock, provisions for man and beast, and all necessary utensils, in the same proportion, and are to pay and defray the expenses of said copartnership, and share its profits in the same proportion; the said farm is to be carried on on the Brooke place, near Lexington, and the mill to be located at such place as a majority of the parties in interest may agree on; and the said parties of the third part are to superintend—one of them the said farm, and the other the said mill; and the said party of the first part is to render them such needful assistance as he can without any extra charge therefor, and at the expiration of the said two years, after paying the debts of said copartnership, the profits are to be equally divided between the said parties of the first, second, and third parts; and in the absence of any other agreement, each party is to resume possession of his respective share of the said capital stock, &c.

In testimony whereof, the said parties of the first, second, and third parts have hereto set their hands, this the 5th day of January, 1853.

(Signed) L. N. DEMENT,
JOSEPH KIMBRO,
J. C. G. KIMBRO.
JOSEPH A. KIMBRO,
Pr. J. C. G. KIMBRO.

I then submitted said articles to said Lesenby N. Dement and John C. G. Kimbro, and they approved and signed the same; the

said John C. G. Kimbro doing so on behalf of himself and the said defendant, Joseph A. Kimbro, and they then requested me to take charge of said articles, as the mutual depositary of the parties thereto, and for their mutual benefit and protection. Said articles have continued in my possession since that time, and I have made the foregoing copy therefrom. Said firm, so far as I know, has never been held out by any of the Kimbros, as having any more extensive powers than those conferred by said articles, (Joseph Kimbro, sen'r, the defendant, left here for Tennessee, either a day or two before, or a day or two after said articles were signed, and did not return till next fall,) nor did ever said Dement do so with the knowledge of the defendant, so far as I know.

Planting and mill partnerships in this country are not numerous, and it is no easy matter to say what powers are by usage exercised by the several partners without the express consent of their copartners in such partnerships; but among the few partnerships of the kind that have come to my knowledge, when money has been needed, and the several partners cannot be consulted, the managing one raises the money on his own credit, and charges the same to the partnership.

The farm, in the articles mentioned, is adapted in size to some fifteen hands, but what amount of money it would take to supply it with provisions, &c., I don't know, nor do I know anything as to expenses of carrying on a mill.

I believe the foregoing embraces all I know pertaining to the matter in controversy.

THOMAS BOTTERS.

Deposition of Thomas Whaley.—Taken Sept. 19, 1856.

Interrogatory 1. Look at the three bills of exchange marked Exhibits A, B, and C, dated Lexington, Mississippi, April 2d, 1853, drawn by Morgan McAfee upon Bullitt, Miller & Co., of New Orleans, and by them accepted, for the sum of two thousand dollars each—one of which, marked Exhibit "A," due 18th Jan'y, 1854; another marked Exhibit "B," payable 4th Feb'y, 1854; and the third payable 25th Feb'y, 1854—and state whether you ever saw said bills, or either of them, before. State, if you know, what said bills were originally given for, or for what purpose the money to be raised from them was to be used.

Answer of Thos. Whaley. I have looked at the three bills, which I make part of this answer in the interrogatory. The bill marked Exhibit "B" was discounted, by and through me, for the benefit of Wirt Adams, of Jackson, Mississippi, at Lexington, Ky., after the same had been accepted, and remitted the proceeds to Wirt Adams, at Jackson, Mississippi. The two bills marked Exhibits "A and C" I never saw before, and have no knowledge of. I do not know for what consideration the bills were given, nor for what

purpose the proceeds of said bills were to be used. The bill which I had discounted I was compelled to endorse, and also to procure the endorsement of Thomas H. Hunt & Co., before I could have it discounted.

And further this deponent saith not.

THOMAS WHALEY.

Exhibit "A."

$2,000.

LEXINGTON, HOLMES Co., MI., *April 2d*, 1853.

On the 18th January, 1854, pay to order of Morgan McAfee two thousand dollars, value received, and charge same to acc.

MORGAN McAFEE,
DEMENT, KIMBRO & SONS.

To BULLITT, MILLER & Co., *New Orleans.*

(190.)

Endorsed: Morgan McAfee and Dement, Kimbro, & Sons.

Exhibit "B."

$2,000.

LEXINGTON, HOLMES Co., MI., *April 2d*, 1853.

On the 4th February, 1854, pay to order of Morgan McAfee two thousand dollars, value received, and charge same to acc.

MORGAN McAFEE,
DEMENT, KIMBRO & SON.

To BULLITT, MILLER & Co., *New Orleans.*

(191.)

Endorsed: Morgan McAfee, Wirt Adams, Thomas Whaley, and T. H. Hunt & Co.

Exhibit "C."

$2,000.

LEXINGTON, HOLMES Co., MI., *April 2d*, 1853.

On the 25th February, 1854, pay to the order of Morgan McAfee two thousand dollars, value received, and charge to acc.

MORGAN McAFEE,
DEMENT, KIMBRO & SONS.

To BULLITT, MILLER & Co., *New Orleans.*

(192.)

Endorsed: Morgan McAfee, Dement, Kimbro & Sons.

Deposition of Girard Stites.

Int'y to Girard Stites. Look at three bills of exchange, marked A, B, and C, dated Lexington, Miss., April 2, 1853, drawn by Morgan McAfee and Dement, Kimbro and Sons, in favor of Morgan McAfee, upon Bullitt, Miller & Co., New Orleans, and by them ac-

cepted, for the sum of two thousand dollars each—one of which, marked Exhibit "A," due 18th Jan'y, 1854; another, marked Exhibit "B," payable 4th Feb'y, 1854; and the third payable the 25th Feb'y, 1854—and state whether you ever saw said bills, or either of them, before. State, if you know, what said bills were originally given for, or for what purpose the money to be raised from them were to be used.

Ans. I have looked at the said bills, which I here make part of my answer. I never saw said bills before, and have no knowledge of them, or either of them, and do not know for what consideration they were given, or for what purpose the proceeds were used.

And further deponent saith not.

GIRARD STITES.

This was all the evidence in the case. The court charged the jury in the following words:

Charge to Jury.

Charge.

The court charge the jury that Dement, the principal acting partner of the firm of Dement, Kimbro & Sons, had power to draw the bills given in evidence according to the proof adduced to them, if true; that if the bills were accepted and paid at maturity by the plaintiffs, for said firm, the defendant, Joseph Kimbro, was responsible, and it mattered nothing to the plaintiffs how the proceeds of the bills were disposed of, as this was a fact the plaintiffs could not know, and were not bound to prove.

Verdict of Jury.

Verdict.

The jury found a verdict for the plaintiffs, and the defendant moved for a new trial, which the court refused; and to the opinion of the court expressed in the charge to the jury the defendant excepts in law, and tenders this bill of exceptions, and prays that the same be made part of the record; which is done accordingly.

(Signed) J. CATRON. [SEAL.]

Order made Nov. 12, 1857.

Writ of Error.

At October term, 1857, the court made the following order:

The parties again come, by their attorneys, and, on application of said defendant, by his attorney, a writ of error is granted here on this cause to the next Supreme Court of the United States, held at Washington city; and it is ordered by the court that the first of December be allowed the defendant to give bond and security for prosecuting said writ of error.

And the writ of error having been granted by the Honorable

John Catron, associate justice, &c., it is agreed by the plaintiffs, by their attorney, that service of citation and allowance of the writ of error is acknowledged by them.

Appeal Bond.

Know all men by these presents, that we, Joseph Kimbro, and James Johnson, and R. J. Meigs, citizens of the State of Tennessee, are held and firmly bound unto Cuthbert Bullitt, Thomas D. Miller, and Lloyd D. Addison, citizens of the State of Louisiana, and partners in trade, under the name and style of Bullitt, Miller & Co., in the penal sum of three hundred dollars, to be void on condition that the said Joseph Kimbro does pay and satisfy all costs that may accrue in the prosecution of a writ of error, obtained by him, to carry up to the Supreme Court of the United States the record and proceedings of a judgment obtained by the said Bullitt, Miller & Co., in the circuit court of the United States for the district of Middle Tennessee, at October term, 1857, against the said Joseph Kimbro, for five thousand five hundred and ten dollars and forty-eight cents, besides costs of suit.

Witness our hands and seals this first day of December, 1857.

JAMES JOHNSON.
R. J. MEIGS.

Circuit Court of the United States for the district of Middle Tennessee.

I, Jacob McGavock, clerk of said court, do hereby certify that the foregoing 20 pages contain a true and complete transcript of the record and proceedings of said court in the suit, Bullitt, Miller & Co., plaintiffs, against Joseph Kimbro, defendant, tried in said court at October term, 1857.

In testimony whereof I hereto subscribe my name and affix the [SEAL.] seal of said court, at office in Nashville, this 19th day of January, A. D. 1858, and 81st year of our independence.

JACOB McGAVOCK.

NASHVILLE, *March* 26, 1858.

To the Clerk of the Circuit Court of the United States for the district of Middle Tennessee:

In the case of Bullitt, Miller & Co. against Joseph Kimbro, decided at the October term of said court, 1857, you are hereby ordered to take an appeal bond from said Kimbro, as plaintiff in error, for the whole amount of the debt and costs recovered, and also for the damages that may be recovered by reason of the appeal in the Supreme Court, and you will take R. J. Meigs and James Johnson as securities of said Kimbro for the appeal, which bond, after it is executed, will be presented to me for allowance; you will also issue a supersedeas to the execution issued on said judgment, nor will you

issue any other execution until the further order of the court which rendered the judgment.

J. CATRON,
Asso. Jus. S. C. U. S.

A true copy. Attest:

JACOB McGAVOCK,
Clerk U. S. C. C. D. M. T.

Appeal Bond.

Know all men by these presents, that we, Joseph Kimbro and James Johnson and Return J. Meigs, of the county of Davidson and State of Tennessee, are held and firmly bound unto Cuthbert Bullitt, Thomas D. Miller and Lloyd D. Addison, trading under the firm of Bullitt, Miller & Co., citizens of the State of Louisiana, in the penal sum of eleven thousand and twenty dollars ninety-six cents, current money of the United States, to be paid to the said Bullitt, Miller & Co., their heirs, executors, adm'rs, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and adm'rs, jointly and severally, by these presents. Sealed with our seals and date this 25 day of March, 1858.

The condition of the above obligation is such, that whereas lately in the circuit court of the United States for the district of Middle Tennessee, in said suit depending in said court between said Bullitt, Miller & Co. against said Joseph Kimbro, judgment was rendered in favor of said Bullitt, Miller & Co. against said Joseph Kimbro for five thousand five hundred and ten dollars and forty-eight cents, besides costs; and whereas the said Joseph Kimbro obtained a writ of error to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said circuit court in said cause in the office of the clerk of the Supreme Court of the United States to remove the judgment of said suit:

Now, if the said Joseph Kimbro shall well and truly prosecute his said writ of error with effect, or, in case of failure, pay to the said Bullitt, Miller & Co. the amount of the judgment aforesaid, and all such damages as may be recovered by reason of the writ of error aforesaid, and wrongfully prosecuting the same, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH KIMBRO, [SEAL.]
JAMES JOHNSON, [SEAL.]
R. J. MEIGS. [SEAL.]

A true copy. Attest:

JACOB McGAVOCK, *Clerk.*